

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 536 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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SANDHYA YOGESH CHHARA

Versus

COMMISSIONER OF POLICE

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Appearance:

MR FM BATUNGE for Petitioner

MS. HANSA PUNANI ASSTT. GP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/07/1999

ORAL JUDGEMENT

The petitioner herein challenges the order of preventive detention dated 8th October, 1998 (Annexure "A" to the petition) made by the Commissioner of Police, Ahmedabad City under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the Act").

2. It is alleged that the petitioner is a bootlegger within the meaning of section 2 (b) of the Act and that the activities of the petitioner are prejudicial to the maintenance of public order.

3. As many as four offences have been registered against the petitioner for violation of the Bombay Prohibition Act. Two of the said cases are pending trial and the later two cases are pending investigation. In each of the cases, substantial quantity of liquor was recovered from the petitioner. In one of the cases large quantity of liquor wash and paraphernalia of a brewery were recovered from her residence. In each of the said cases, the petitioner has been ordered to be released on bail. It is, thus, apparent that even after her release on bail, the petitioner has continued her nefarious activities. Besides, the police has collected some more evidence in respect of her nefarious activities. Two witnesses have been examined by the police inspector on 5th October, 1998 and 6th October, 1998 respectively. Both the said witnesses have made the statements with regard to the incidents which indicate the petitioner as head strong person and her activities had disturbed the even tempo of life and public tranquility. Having thus collected the material against the petitioner, on 7th October, 1998, proposal was made by the detaining authority to detain the petitioner under the Act. Having received the said proposal, the detaining authority issued summons to the witnesses. The witnesses appeared before the detaining authority on 8th October, 1998 and having verified the apprehension voiced by the said witnesses, the detaining authority ordered preventive detention on 8th October, 1998.

It does appear that the petitioner has been dealing in country liquor which is injurious to the public health and the activities of the petitioner are, thus, prejudicial to the maintenance of public order within the meaning of sub-section (4) of section 3 of the Act. However, what is disheartening is the way in which the statements of the witnesses are recorded and acted upon. If at all the detaining authority relies upon the statements of the witnesses, it is imperative for him to satisfy himself with respect to the genuineness of such statements and also to satisfy whether the privilege under section 9(2) of the Act is required to be invoked. In the present case, what I find is that the statements are recorded by the Police Inspector on 5th and 6th October, 1998; proposal was made on 7th October, 1998 and on 8th October, 1998, the witnesses are summoned for verification in respect of the need to claim privilege

under section 9 (2) of the Act. Neither the Police Inspector seems to have verified the genuineness of the statements made by the said witnesses nor has the detaining authority recorded his satisfaction in respect of the genuineness of the said statements. The verification made by the detaining authority is confined to the need to invoke the privilege under section 9(2) of the Act. I am of the view that the detaining authority ought not to have relied upon the said statements without first satisfying himself that the said statements were genuine and the incidents referred to therein did occur. In absence of such satisfaction recorded by the detaining authority, the subjective satisfaction arrived at by the detaining authority is vitiated.

Petition is, therefore, allowed. The impugned order of detention dated 8th October, 1998 (Annexure "A" to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

20.7.1999. (R.M.Doshit,J.)

Vyas